

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JULIO CHRISTIAN	:	
Petitioner,	:	CIVIL ACTION
	:	
v.	:	
	:	
COMMONWEALTH OF PA, et al.	:	NO. 05-3448
Respondents.	:	

**Baylson, J.**

**January 25, 2006**

**MEMORANDUM**

**I. Introduction**

Petitioner Julio Christian (“Petitioner”) filed a pro se Petition for Writ of Habeas Corpus in this Court pursuant to 28 U.S.C. § 2254 on July 5, 2005. This Court referred the case to Magistrate Judge Caracappa (“the Magistrate Judge”) on September 26, 2005. On December 22, 2005, the Magistrate Judge issued a Report and Recommendation (“R&R”) (Doc. No. 24) suggesting that this Court dismiss the petition as premature. Petitioner filed five substantially unintelligible documents in response: (1) an untitled, ten-page document filed on December 30, 2005; (2) a one-page document entitled “Objection to Respondents Answer” filed on January 4, 2006; (3) a one-page document entitled “Objection to Falsehood in United States District Court” filed on January 6, 2006; (4) a two-page document entitled “Objection to Defendants’ Mark of Injustice” filed on January 6, 2006; and (5) a two-page document entitled “Official Court Notice Hearing Mandatory Explanation Pursuant to Arrest” filed on January 20, 2006.

Upon independent and thorough consideration of the record and all filings in this Court, Petitioner’s objections are overruled and the recommendations made by the Magistrate Judge are

accepted.

## **II. Background and Procedural History**

Petitioner was arrested and charged with robbery; kidnapping by force, threat or deception; carrying firearms on a public street; possession of arms by a person convicted of a crime of violence; theft by unlawful taking; theft by receiving stolen property; possessing instruments of crime; terroristic threats; unlawful restraint; simple assault; recklessly endangering another person; and false imprisonment.

A preliminary hearing was held before Philadelphia Municipal Court Judge Georgina Daher on March 15, 2005. Petitioner was held for trial on all counts. Petitioner was represented by Fabian Lima, a privately-retained attorney, at the preliminary hearing. Following the preliminary hearing, Mr. Lima requested permission to withdraw from the case because Petitioner had accused Mr. Lima of conspiring with the Commonwealth. Petitioner told the court he wanted to hire another attorney and, thus, did not want court-appointed counsel. The court continued the case to December 2, 2005.

On December 2, 2005, Petitioner informed the court that he was not able to retain counsel and, thus, desired appointment of counsel. The court appointed a public defender and continued the case to December 6, 2005. On December 6, 2005, Petitioner informed the court that he had hired Todd Henry, Esq., as his counsel. The court contacted Mr. Henry and was informed that Mr. Henry was not representing Petitioner. Petitioner then agreed to allow the public defender to represent him. The case was continued until May 12, 2006.

On July 5, 2005, Petitioner filed the instant Petition for Writ of Habeas Corpus. On December 19, 2005, the Respondents answered Petitioner's habeas petition, arguing that it

should be dismissed without prejudice because it was premature.

### **III. Summary of Magistrate Judge's Report and Recommendation and Petitioner's Objections**

The Magistrate Judge concluded in the R&R that this habeas petition should be dismissed as premature pursuant to the doctrine of ripeness and the requirement of the exhaustion of remedies in state court. R&R at 2-3. Specifically, the R&R concludes that Petitioner's writ of habeas corpus is premature because (1) Petitioner has yet to be convicted of any charges, and (2) Petitioner has failed to present any claims (which would presumably be based on any such conviction, if and when it should occur) to the Pennsylvania Superior Court, thereby failing to exhaust his state law remedies, as required by Castille v. Peoples, 489 U.S. 346, 350 (1989) and O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999). R&R at 2-3.

In the substantially unintelligible documents Petitioner has filed in response to the R&R, Petitioner makes only the following references to the conclusions set forth in the R&R. First, in the document entitled "Objection to Respondent's Answer," Petitioner states: "(5) Exhaustion of required state remedy as outlined: (E) facts set forth are undisputed thus, supported by documented evidence." See Petitioner's "Objection to Respondent's Answer" at 1. Second, in the document entitled "Objection to Defendants' Mark of Injustice," Petitioner states:

Once after filing for relief through state court: not being called forth for a ruling being then served "disposed matter" petitioner is no longer required by law to seek further relief through state remedy matter must be discharged where commonwealth dispose case upon inadmissible evidence without probable cause (see: positive identification - no probable cause) wherefore, it is the district attorney's duty in office to seek justice where, then being deprived hearing pursuant to Rule 6509, Pa. R.C.P. motion must be granted where then petitioner states his claim by law.

Wherefore: the matter must be heard then granted.  
See Petitioner's "Objection tot Defendants' Mark of Injustice" at 1.

The Court finds that Petitioner does not coherently object to the conclusions contained in the R&R, nor does Petitioner set forth any evidence of the required exhaustion of state law remedies.

#### **IV. Discussion**

Petitioner presents no credible challenge to the conclusions contained in the R&R. Therefore, for the reasons stated by Magistrate Judge Caracappa, the Petition for Writ of Habeas Corpus will be dismissed without prejudice.

An appropriate Order follows.

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	:	

**ORDER**

AND NOW, this        day of January, 2006, upon careful and independent consideration of the pleadings and the record herein, and after review of the Report and Recommendation of Linda K. Caracappa, United States Magistrate Judge, it is hereby ORDERED as follows:

1.     The Report and Recommendation is APPROVED AND ADOPTED.
2.     The Petition for Writ of Habeas Corpus is DENIED AND DISMISSED without prejudice.
3.     The Clerk shall close this case.
4.     A certificate of appealability is DENIED.

BY THE COURT:

/s/ MICHAEL M. BAYLSON  
Michael M. Baylson, U.S.D.J.